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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,156	09/10/2003	Michael Wayne Bricker	18013 (AT 20958-43)	3718

7590 10/13/2005  
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EXAMINER

NGUYEN, CHAU N

ART UNIT PAPER NUMBER

2831

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/659,156	BRICKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chau N. Nguyen	2831	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 3-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Wiekhorst et al. (2004/0055779).

Wiekhorst et al. discloses (Figure 6) a cable comprising a cylindrical core comprising at least one twisted pair of insulated wires, and a jacket surrounding the core, the jacket comprising at least one spline projecting inward from an inner surface of the jacket, wherein at least a portion of the twisted pair is positioned between the spline and a center of the core (re claim 1). The feature of preventing relative movement of the jacket with respect to the core is inherent from the structure of Wiekhorst et al. Wiekhorst et al. also discloses the at least one spline comprising a plurality of splines projecting inward from the inner surface of the jacket (re claim 3), the spline being continuously extending on the inner surface of

the jacket (re claim 4), the spline extending along a longitudinal axis of the core (re claim 5), the at least one spline comprising at least two splines projecting inward from the inner surface of the jacket, the splines equally spaced from one another (re claim 7), the at least one spline comprising four splines projecting inward from the inner surface of the jacket (re claim 8), and the splines projecting radially inwardly from the inner surface of the jacket (re claim 9). Re claim 6, it has been held that the patentability of a product claim is determined by the novelty and nonobviousness of the claimed product itself without consideration of the process, extruded, for making it which is recited in the claim. In re Thorpe, 227 USPQ 964.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 2 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiekhorst et al. in view of Koyasu et al. (2003/0205402).

Wiekhorst et al. discloses the invention substantially as claimed except for a central core filler which is round. Koyasu et al. discloses a cable comprising a central core filler which is round. It would have been obvious to one skilled in the art to provide the central core filler taught by Koyasu et al. in the cable of Wiekhorst et al. to further secure the positions of the twisted pairs within the cable.

### ***Response to Arguments***

6. Applicant's arguments filed 8/26/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Weikhorst et al. does not teach, suggest, or recognize the problem addressed by the present invention, namely preventing relative movement of a cable jacket with respect to a core, the fact that

applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicant then argues that because the core element (54) of Weikhorst et al. has a smooth and continuous outer surface and because the inner surface of the channeled jacket (56) that contacts the core element (54) is also smooth and continuous, nothing in the contact surfaces would prevent one surface from sliding with respect to the other, and no structure in Weikhorst et al. would prevent relative movement of the cable jacket (56) with respect to the core element (54). These arguments are not found persuasive. Core element (54) of Weikhorst et al. is surrounded by an imagination line which is not an actual layer, and nowhere does Weikhorst et al. disclose that the outer surface of the core element and the inner surface of the channeled jacket are smooth. Moreover, the fact that Weikhorst et al. discloses the cable comprising structure and material as claimed, the relative movement of the jacket with respect to the core would be prevented. If applicant insists that no structure in Weikhorst et al. would prevent such relative movement, applicant needs to show the structural difference between the prior art and the claimed invention.

Applicant also argues that Weikhorst et al. describes that it is desirable to minimize the area the legs of the jacket occupy on the core element [0062], therefore the construction of the Weikhorst et al. cable is not only to fail to prevent relative movement of the cable jacket and core, but to promote relative movement of the jacket and the core. In the same paragraph [0062], Weikhorst et al. also discloses that while the area the legs of the jacket occupying on the core element is minimized, the physical integrity of the wire should be maintained.

Regarding the Koyasu reference, applicant argues that Koyasu does not disclose the spline as recited in claim 1. In response, Koyasu is relied upon only to support the position of providing a central core filler in the cable to further secure the positions of the twisted pairs, therefore Koyasu does not have to disclose a spline as claimed in claim 1.

### *Summary*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the

advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chau N. Nguyen whose telephone number is 571-272-1980. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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